

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company)	
d/b/a Ameren Illinois)	
)	Docket No. 14-0097
Petition for Approval of Tariffs)	
Associated with the Small Volume)	
Transportation Program)	

**INITIAL BRIEF OF THE CITIZENS UTILITY BOARD
AND THE PEOPLE OF THE STATE OF ILLINOIS**

Now come the Citizens Utility Board, (“CUB”), by and through its counsel, and the People of the State of Illinois, by Attorney General Lisa Madigan, (“AG”), pursuant to 83 Ill. Admin. Code §200.800 and the schedule adopted by the Administrative Law Judge (“ALJ”), to file this Initial Brief in the above-captioned proceeding. This proceeding addresses proposed tariffs for a residential gas choice program for Ameren Illinois Company (“Ameren”), called Rider Small Volume Transportation (“Rider SVT”). For the reasons outlined below, CUB and the AG recommend that the Commission reject the program as currently structured, because the increased costs of implementing the program dramatically outweigh the potential benefits of such a program.

I. INTRODUCTION

This proceeding arose out of Docket No. 13-0192, in which Ameren filed draft tariffs that outlined the logistical and technical parameters of the proposed SVT program, and also sought cost recovery in the amount of \$10.6 million to execute the program. In the Commission’s final order in Docket No. 13-0192¹ (“*13-0192 Order*”), the Commission determined that a retail gas

¹ Ameren Illinois Company d/b/a Ameren Illinois, Proposed general increase in natural gas rates (tariffs filed March 6, 2013), ICC Docket No. 13-0192, December 18, 2013 Order.

choice program should go forward in Ameren territory, and ordered Ameren's tariff to be filed in a separate proceeding, after additional workshops were held to address any unresolved issues.

Since its directive in Docket No. 13-0192, however, circumstances have dramatically altered, rendering it imprudent for the Commission to approve the proposed Rider SVT tariffs. The projected costs to implement the program, which will be paid by Ameren's ratepayers, have more than tripled from what the Commission previously approved. Additionally, the timeline for roll-out of the program was extended approximately two years, to fourth quarter 2016. The Commission cannot ignore these critically important developments. The evidence in this proceeding demonstrates that any projected benefits resulting from a competitive gas supply market in Ameren territory do not outweigh the now significant costs to implement and operate the program. CUB has repeatedly urged this Commission to perform a cost-benefit analysis in considering whether to approve Ameren's SVT program². In Docket No. 13-0192, CUB sponsored the testimony of Mr. Martin R. Cohen, who suggested that the Commission should not proceed with the SVT program until the evidence showed the benefits outweighed the costs. See *13-0192 Order* at 220. The Commission, while not explicitly rejecting this suggestion, concluded that it believed "the record contains a sufficient showing that the potential benefits of an SVT program in AIC's service territory, while not certain, are likely." *13-0192 Order* at 246.

Mr. Cohen further proposed several consumer protections to address problems CUB has observed in the retail gas market. The Commission adopted the following three consumer protections at page 247 of its *13-0192 Order*:

1. A customer shall be absolved from paying any termination fees if, prior to the due date of their first bill, they notify the supplier that they are terminating the contract.

² "CUB believes the Commission should seek evidence of qualitative and quantitative benefits from SVT programs; how those benefits would be derived; and how the projected benefits compare to projected costs of implementation and operation of the SVT program." *13-0192 Order* at 246.

2. When a customer has accepted service from a supplier after solicitation by a door-to-door salesperson, there shall be no termination fees assessed if the customer terminates during the first 6 billing cycles.
3. If a supplier's marketing materials include a price comparison of the supplier rate and the gas utility rate, the depiction of such comparison shall display at least three years of data in no greater than quarterly increments and shall also display the supplier's offered price for the same or equivalent product(s) or service(s) for each of the same increments.

The Commission concluded that these consumer protections “are reasonable and appropriate supplements to the existing statutory protections and are hereby adopted.” *13-0192 Order* at 247-48. CUB continues to believe these consumer protections are vital components to a well-functioning retail gas market in Ameren territory, if such a program goes forward. Stakeholder workshops were held on January 16, 2014, January 28, 2014, and April 15, 2014, both before and after Ameren filed the instant proceeding on January 31, 2014, to resolve certain remaining issues for the program. CUB attended each workshop, the last of which addressed issues surrounding the additional consumer protections the Commission ordered in Docket No. 13-0192.

In addition to the consumer protections ordered by the Commission in Docket No. 13-0192, CUB witness McDaniel proposed additional modifications to the SVT tariff to further support consumer education and regulatory transparency. Mr. McDaniel has significant experience with consumer energy issues, having been employed by CUB for nearly 10 years in different positions, including responding to consumer utility complaints, testifying in a formal complaint proceeding CUB brought against an Alternative Gas Supplier (“AGS”), and finally as CUB’s Director of Government Affairs, in which position he stays apprised of retail gas supply issues. Mr. McDaniel also currently maintains direct contact with the state’s consumers at

outreach events, where he talks to consumers about their experiences with the competitive market. He testified that his experience in the community and working on supplier-related issues reaffirms the need for strong consumer protections for Ameren gas customers who will face a new competitive market in which they may choose a competitive supplier to serve their gas supply, if the Commission proceeds with the ill-advised approach of directing Ameren to implement a gas choice program at any cost.

II. Procedural History

In a 2011-2012 Ameren gas rate proceeding, Docket No. 11-0282, the Retail Gas Suppliers requested that the Commission direct Ameren to develop a natural gas choice program for residential and small commercial customers. See Ameren Illinois Company d/b/a Ameren Illinois, Proposed general increase in natural gas rates (tariffs filed February 18, 2011), ICC Docket No. 11-0282, Jan. 10, 2012 Order at 185 (“*11-0282 Order*”). Staff, CUB, the AG and Ameren all recommended that the Commission adopt a slower approach and await a report from the Commission’s Office of Retail Market Development (“ORMD”) before proceeding. *11-0282 Order* at 193. In Docket No. 11-0282, the Commission ultimately determined that it would proceed with a workshop process to address the following issues: whether an SVT is appropriate for the AIC service territories, including whether there would be any benefit to customers from such a program; whether the costs of implementing such a program would be reasonable; whether there is utility support for the competitive market; will there be full utility cost recovery for the utility; and a properly adjusted price-to-compare. *Id.* at 194. The Commission made clear in its *11-0282 Order* that it was not intending to “prejudge whether and to what extent a natural gas retail choice program may be appropriate for AIC.” *Id.* at 195.

Multiple workshops took place in 2012. Subsequent to its initial filing in the Docket No. 13-0192 rate proceeding, Ameren filed a draft SVT tariff with accompanying testimony that was partially the result of discussions in the workshops. Ameren did not request approval of these tariffs and they were not suspended. Ameren agreed to implement an SVT program if it received clear direction from the Commission and that its SVT implementation costs are fully recovered, but it did not propose its adoption. *13-0192 Order* at 213. CUB sponsored the testimony of former ICC Chairman, Martin Cohen, an expert with over 25 years of experience in utility consumer issues, who urged the Commission to examine the costs and benefits of SVT, and order necessary consumer protections, tracking of costs and benefits of retail gas choice in AIC territory and annual reporting to the Commission. *See id.* at 220.

In Docket No. 13-0192, the Commission ultimately concluded the following:

In this instance, the Commission believes the record contains a sufficient showing that the potential benefits of an SVT program in AIC's service territory, while not certain, are likely. SVT programs in Illinois have been the subject of discussion, experimentation and implementation. The Commission has concerns about the missteps by certain gas suppliers in the Northern Illinois market, and believes additional consumer protections are necessary to prevent the same types of abuses in the AIC territory. While recent amendments to the Alternative Gas Supplier Law provide additional layers of scrutiny to the alternative gas supplier certification process, these provisions do not directly address the severity of the problems seen with the door-to-door sales model and its potential for customer confusion and/or misleading marketing. The Commission concludes that it is in the public interest to approve an SVT program at this time, but with the additional consumer protections discussed below.

13-0192 Order at 246.

The Commission also approved Ameren's projected \$10.6 million in costs to implement and operate the program. New evidence has been produced in this docket, however, to undermine the assumptions on which the Commission approved the SVT program.

On April 28, 2014, Ameren filed a Motion for Leave to File Supplemental Direct Testimony and Proposed Procedural Schedule. The Motion was granted, and a new procedural schedule was adopted to accommodate responsive testimony to Ameren's supplemental direct testimony, which informed the Commission and the parties about significant change in the scope of SVT program costs. May 28, 2014 Tr. at 34. In his Supplemental Direct Testimony, Ameren witness Glaeser testified that the \$10.6 million that was approved in the *13-0192 Order* to implement Rider SVT was spent on Phase 1 systems, and the updated cost estimate for Phase 2 systems was now estimated to be an additional \$21 million. Ameren Ex. 4.0 at 11:221-234. This is the Commission's first opportunity to consider these increased costs and whether to proceed with the SVT program in light of them.

III. Continuation of SVT Program

CUB-AG recommend that the Commission reject the draft SVT tariffs submitted in this proceeding and hit the pause button on gas competition in Ameren territory. As CUB argued in Docket No. 13-0192, the Commission should give serious consideration to the significant costs associated with implementing the SVT program and weigh those costs against the potential future benefits of such a program. The dramatic increase in costs that Ameren currently projects simply amplifies the importance of the cost-benefit analysis CUB urged the Commission to undertake in Docket No. 13-0192. Ameren's ratepayers should not be on the hook for over \$30 million in costs for a program that is not likely to bring concomitant benefits.

The evidence in this proceeding sheds serious doubt on the Commission's conclusion that a gas choice program is likely to create net benefits for Ameren's customers. In this proceeding, Ameren has presented a reasonable and compelling analysis of the potential benefits of gas choice, which puts meat on the bones of the analysis CUB witness Cohen presented to the

Commission in Docket No. 13-0192. Like Mr. Cohen³³, Ameren witness Glaeser concluded that “given the shale gas effect on gas markets, the cost of SVT will likely be greater for customers over the next few years than the opportunity for price savings.” Ameren Ex. 4.0 at 14:296-299. In this proceeding, CUB witness McDaniel agreed with Ameren witness Glaeser’s opinion that, taking the moderated commodity price and volatility together with the change in electric switching and a reversal of the municipal aggregation trend, the likely result is an SVT program that is used by a very small portion of Ameren’s customer base. Ameren Ex. 4.0 at 14:284-293; CUB Ex. 2.0 at 2:29-36. CUB-AG agrees with Mr. Glaeser that, if there is “no substantial price differential to prompt customers to switch, nor any governmental aggregation to enable municipalities to switch large numbers of customers, then it follows there is a substantial likelihood that an SVT program designed to accommodate high volume switching will go largely unused.” Ameren Ex. 4.0 at 14:284-293.

Ameren witness Glaeser performed a quantitative cost-benefit analysis in his Exhibit 4.1. This analysis shows the NYMEX forward natural gas prices for 2016 through 2020 and an adjustment for Panhandle Eastern basis and Panhandle Eastern fuel gas retention to arrive at a Panhandle Eastern field zone purchase price forecast. Ameren Ex. 4.1. Mr. Glaeser also included Ameren’s 2016 through 2020 budgeted commodity gas cost forecasts to determine the forecast difference between the market price for natural gas during that timeframe compared to what is forecast to be included in Ameren’s Purchased Gas Cost Adjustment (“PGA”) for system

³³ In its final Order in 13-0192, the Commission summarized CUB’s position regarding the likelihood of consumer savings resulting from gas choice as follows: “CUB claims that beating the utility PGA price is challenging, because utilities execute gas procurement strategies utilizing pipeline storage, injections, and withdrawals from company-owned storage, competitively bid supply contracts, spot purchases, and financial hedges designed to provide the lowest possible price to customers consistent with sufficiency, reliability, and mitigation of price volatility. CUB says gas supply customers are provided gas commodity by AIC at its cost per unit of energy, without a markup. CUB contends providing lower-cost gas to AIC’s consumers is not likely as easy a matter as RGS and ICEA/RESA portray it, and should not be assumed without a comparison between supplier and utility gas costs in existing gas choice programs in Illinois. (CUB RB at 26).” *13-0192 Order* at 224.

sales customers, which are customers who take supply from the utility. Ameren Ex. 4.0 at 16:332-338; Ameren Ex. 4.1. His analysis of the costs of the program first takes each year's revenue requirement as summarized on Page 1 and calculates a per MMBtu cost based on an assumed 100,000 customer level of participation in the SVT program. Ameren Ex. 4.1. The per MMBtu cost of \$.8635 in Year 1, \$.7978 in Year 2 \$.7321 in year 3 and so on for Years 4 and 5, represents the savings that would need to be achieved by the 100,000 customers participating in the program in order to show a net financial benefit to the system of spending the \$21 million for Phase 2 SVT program costs. Ameren Ex. 4.0 at 16:332-338; Ameren Ex. 4.1.

The information provided in Ameren Ex. 4.1 shows that the abundant supply of shale gas has dramatically changed the forward price view for natural gas in the United States. Page 3 shows that AIC's forecasted PGA for system sales customers in Year 1 is very close to the market price that AIC's customers would expect to pay a third- party supplier. Ameren Ex. 4.1 at 3. For Years 2-5 AIC's forecasted PGA is less than the market price and while AIC flows through PGA costs without a mark-up, one would certainly expect a third-party supplier to add a profit margin on to their market price, which would reduce the potential price savings even more. Ameren Ex. 4.0 at 16-17:340-349, citing Ameren Exhibit 4.1.

While this analysis is based on clearly-defined and reasonable, albeit alterable, assumptions, CUB and the AG agree with Mr. Glaeser that "it is clear from the information provided that the potential for gas cost savings to AIC's customers is called into question and those potential gas cost savings completely disappear once you add in the cost to recover the additional \$21 million Phase 2 cost of the SVT program." Ameren Ex. 4.0 at 17:346-349. While changes in assumptions could change this analysis, it demonstrates that the Commission's

previous conclusion regarding the likelihood of consumer net benefits being delivered through gas choice was presumptuous and out of line with current market conditions.

In addition to the reasons outlined in Ameren's testimony, challenging the propriety of moving forward with an SVT program in light of the significant cost increases, CUB witness McDaniel testified about additional limitations on potential benefits of residential gas choice. Mr. McDaniel testified that the potential benefits of a SVT tariff for natural gas are also constrained by the inability of consumers to monetize reductions in their demand under the current gas delivery system. CUB Ex. 2.0 at 2:39-49. For example, in the wholesale market for electricity, "negawatts" – or foregone usage – have a financial value. *Id.* Helping a customer capture that value, whether through a time of use offering or some other rate mechanism, is a potential way for Alternative Retail Electrical Suppliers to provide benefits to consumers. *Id.* However, there is no potential financial reward that flows to a consumer from wholesale natural gas markets for creating a "negatherm," largely because of the ability to store unused gas. *Id.* Thus, a potential stream of benefits that flows from wholesale electric markets, does not exist for wholesale natural gas markets. *Id.* These points further constrain the potential benefits of an SVT tariff to justify an additional \$21 million expenditure of ratepayer-supplied funds.

The cost-benefit analysis offered by Ameren represents a reasonable methodology under which the Commission can consider impacts of going ahead with the SVT program. This type of analysis is used in other regulatory contexts at the Commission, including with regard to the cost of energy efficiency programs, which are also recovered from all customers. CUB Ex. 2.0 at 3:61-67. In that context, the Commission applies stringent cost-benefit analyses to ensure that the benefits of the programs outweigh the cost to ratepayers. *Id.* While the cost-benefit analysis associated with the EE programs is statutorily required, the underlying policy basis for it is the

same: that is, the SVT program will be paid for by all customers, and thus the benefits should be shown to outweigh the costs. *Id.*

Despite the dramatic change in circumstances of Ameren's increased costs of SVT program implementation, the parties representing alternative gas suppliers in this proceeding maintain that the Commission should forge ahead in approving the SVT tariffs, without consideration of the significantly increased costs that will be imposed on ratepayers. Retail Gas Suppliers ("RGS") witness Crist claims that Ameren is inappropriately requesting "pre-approval" of the increased implementation costs of the SVT program. RGS Ex. 3.0 at 19-20:412-426. He suggests that the increased costs should not be considered until after they are spent and Ameren seeks recovery of them. *Id.* The witness for the Illinois Competitive Energy Association ("ICEA") and the Retail Electric Supply Association ("RESA"), (collectively, "ICEA/RESA"), Ms. Teresa Ringenbach, also argues that the Commission should go ahead with the SVT program implementation and review the prudence of Ameren's costs in a later rate case. ICEA/RESA Ex. 3.0 at 3:34-36.

RGS and ICEA/RESA witnesses also challenge Ameren's cost-benefit analysis, based on what they perceive to be the unreliability of the NYMEX forward futures curve, which shows that natural gas volatility will dramatically decline in the future. Mr. Crist claims that the NYMEX future curve is a very poor indicator of volatility, RGS Ex. 3.0 at 21:454-464, and Ms. Ringenbach testifies that she is "suspect of any speculation of future market prices," ICEA/RESA Ex. 3.0 at 7:135. Both witnesses claim that natural gas remains a volatile commodity. ICEA/RESA Ex. 3.0 at 8:150-154; RGS Ex. 3.0 at 21:461-464. Ameren witness Glaeser responds that he was not attempting to exactly predict future gas prices, but rather give the Commission a gas market perspective to assist it in making an informed decision regarding

the potential economic benefit of the SVT program. Ameren Ex. 6.0 at 8:165-170. To substantiate his analysis, Mr. Glaeser points to price forecasts for natural gas supplies projected by WoodMackenzie, a well-known and highly respected consulting firm. Id. at 8:170-177. The WoodMackenzie forecast similarly shows very low volatility year to year (from 2015 through 2031). Mr. Glaeser responded to Ms. Ringenbach's claim that last year's polar vortex shows that gas prices remain volatile, (ICEA/RESA Ex. 3.0 at 8:150-154), by pointing out that the Chicago Citygate index price Ms. Ringenbach cited included the cost of pipeline transportation costs and Mr. Glaeser's \$6 price estimate reflects only the gas producer's wellhead price before the cost of pipeline transportation to the city-gate. This is a critical distinction because the higher Citygate prices for February 2014 and March 2014 were more a function of constrained interstate pipeline capacity and not a shortage of gas supply being produced in the production areas. Ameren Ex. 6.0 at 9:184-199.

The supplier group's positions are inscrutable and, if adopted, would represent a gross miscarriage of the Commission's duty to protect ratepayers by allowing recovery of only just and reasonable costs. Under the Public Utilities Act, any service rendered or to be rendered must be just and reasonable and any rule or regulation made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable. 220 ILCS 5/9-101. If the Commission initiates a hearing concerning the propriety of any tariff change, it can only approve those changes which it finds to be just and reasonable. 220 ILCS 5/9-201(c). Illinois courts have held that in order to reach a determination that a change in utility practice is just and reasonable, it must analyze and evaluate the impact of that change on consumers. *Abbott Laboratories v. Illinois Commerce Commission*, 682 N.E. 2nd 340, 350 (1st Dist. 1997); *Citizens Utility Board v. Illinois Commerce Commission*, 658 N.E.2d 1194, 1201 (1st Dist. 1995) ("*Citizens*")

(where prices of telephone calls greatly exceeded their costs, Commission could not find that restructured rates would impose just and reasonable burdens on ratepayers).

The setting of just and reasonable rates involves a balancing of interests. *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n* (1953), 414 Ill. 275, 287, 111 N.E.2d 329, quoting *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944). Illinois courts have adopted these standards and applied them to the regulation of utilities in Illinois. The Commission cannot fulfill its statutory duty to set just and reasonable rates “without taking into account the interests of ratepayers by considering the impact of proposed rates on ratepayers.” *Citizens* at 1200. While the purpose of this proceeding is not to determine whether the costs of implementing Rider SVT are prudent, the Commission would be abdicating its obligation to protect ratepayers from the unjust and unreasonable costs that would result if it ordered Ameren to implement Rider SVT. On the basis of this record, the Commission cannot reasonably conclude that Ameren should incur the over \$32 million in costs to implement the program without a showing of net benefits.

In further support of his cost-benefit analysis, which includes a prediction of less gas price volatility over the coming years, Mr. Glaeser testified that, while no entity can accurately predict future gas prices, he concluded that based upon more than two decades worth of experience in the natural gas and utility industry in managing supply choices, it is prudent to rely upon this type of industry data and economic predictions of forward markets to make educated assessments of the future. Ameren Ex. 6.0 at 11:239-247. CUB-AG agree with Ameren that the Commission must utilize the best information available at this time to determine whether going forward with a residential gas choice program makes sense and is fair, just and reasonable for Ameren’s ratepayers. While intervening events that affect the price of natural gas are certainly

possible, the Commission simply cannot ignore the fact that the development of shale gas reserves has provided a substantial source of domestic gas supply that will be available for decades to come. *Id.* at 11:245-246.

ICEA/RESA witness Ringenbach claims that Mr. Glaeser's cost-benefit analysis ignores potential savings and benefits in later years once the program is fully paid for, and also ignores that current offers in both Nicor Gas Company and The Peoples Gas Light and Coke Company's service territories are 10-20% below those utilities' gas charges as of August 2014. ICEA/RESA Ex. 3.0 at 9-10:190-194. Ms. Ringenbach's claims of future benefit are purely speculative, having no evidentiary support. The singular example provided by Ms. Ringenbach to support this claim was that "current offers" in one month of 2014 were 10-20% lower than the utilities in Northern Illinois, despite the availability of data for choice programs in the Nicor and Peoples Gas territories that have accumulated for more than a decade. When probed on cross-examination, Ms. Ringenbach admitted that she did not present an analysis of customer savings or losses (as compared to the utility price-to-compare) over any period of time outside of that one month, admitting that her "analysis" consisted of merely a snapshot in time. December 2, 2014 Tr. at 94. She also agreed that the PGA price for both Peoples Gas Light & Coke Company and Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor") declined by approximately \$.15 per therm in September 2014 and remained at that lower rate for October and November 2014. *Id.* at 95-96. Considering the \$.15 per therm decline in the PGA represents approximately 15% lower costs than the August 2014 PGA, any temporary savings that customers realized in that month quickly evaporated in subsequent months. This further demonstrates that Ms. Ringenbach's cherry-picked month of August proves to be no more than an anomaly. Ms.

Ringenbach admitted that she did not perform an analysis of the offers of members of ICEA/RESA for any other period of time. *Id.* at 97.

Next, RGS witness Crist suggests that Ameren's cost-benefit analysis does not take into account other non-economic determinants of customer behavior that may influence a customer to switch to an alternative supplier, like a "delightful experience with customer service, or loyalty programs." RGS Ex. 3.0 at 20:441-443. Mr. Crist's statement is void of any evidence that this is, in fact the case, and CUB-AG disagree that such *potential* non-economic benefits, not a single example of which the suppliers in this proceeding would commit to providing in Ameren territory, provide sufficient value to affect the economic cost-benefit analysis supplied by Ameren. CUB-AG agree with Ameren witness Glaeser's assessment that the benefit of supply choice is principally economic. Ameren Ex. 6.0 at 13:282. With regard to his claim that customers may choose competitive gas supply because of "delightful customer experience," Mr. Crist acknowledged that he did not present any studies to confirm this was, in fact, the case, and relied only on his experience in his work with marketers in the gas industry. Tr. at 184. While Mr. Crist testified that he has "conducted market research" showing that there are "a slice of customers that have unsatisfactory customer service experiences with utilities, and those customers are highly motivated to select anyone but a utility as their service provider for supply," he also acknowledged that "there some customers that may be customers of marketers that become discouraged with the experiences that they've received." *Id.* at 185.

Mr. Crist also claimed that an ancillary benefits to a competitive residential gas market that is not represented in Ameren's cost-benefit analysis is the bundling of products and services. On re-direct examination, Mr. Crist gave an example of Direct Energy offering a promotion in Nicor's service territory on Black Friday, in which customers would receive a Nest thermostat

worth a retail price of \$249 bundled with a fixed-price two-year contract and a \$50 Visa gift card. March 2, 2014 Tr. at 202. Mr. Crist claims that the customer who signs up under this deal could realize substantial energy savings, to the tune of 20%, by using the thermostat included in the deal to moderate his or her energy usage. *Id.* at 203. He also acknowledged on cross-examination, however, that there are many different programmable thermostats on the market, available to any consumer, many of which cost far less than the Nest. *Id.* at 205. He further agreed that a consumer could lower their usage by 20 percent by buying a different programmable thermostat on their own, without choosing a different supplier other than the utility. *Id.* Thus, the value of these “bundled” services or products is of questionable value, especially if the customer ends up paying far more to the alternative supplier for the price of gas than he or she would to the utility.

Furthermore, although Mr. Crist was the Marketing Director and the Marketing Vice-President of major utilities, and holds himself out as an expert in retail customer behavior, (March 2, 2014 Tr. at 182-183), he also testified that he does not review sales scripts of gas suppliers currently marketing in Northern Illinois and cannot confirm what sales agents of any particular supplier are saying to potential customers to incite them to sign a contract for service. *Id.* at 187. Nor did Mr. Crist perform an analysis of how gas supply offers in Northern Illinois compared to the relevant utility price-to-compare. *Id.* at 188. And despite claiming that he has seen marketers offer fixed price products that are offered at a discount to the utility price at that time, Mr. Crist could not name a single supplier who has offered such a product. Tr. at 187. Mr. Crist’s assumptions about customer behavior should therefore be put in context of the void of evidence in this docket supporting those assumptions. Considering the adverse cost-benefit analysis presented by Ameren in this proceeding, it was incumbent on the only parties that

support the Ameren SVT choice program to provide compelling evidence that such a program was worthy of pursuing in light of the significant increased costs. Neither ICEA/RESA nor RGS met this evidentiary threshold.

The impact on consumers of the SVT program has been the subject of litigation in this proceeding, but the evidence presented on that impact does not support a finding that the tariffs are just and reasonable. In this case, the Commission's findings on implementation of the SVT program must be specific enough for court review. *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2013 IL App (2d) 120334, ¶38, 375 Ill.Dec. 451, 997 N.E.2d 817 (1994). It is not enough that the Commission's findings determine that program benefits are likely to materialize for some customers. The findings must be sufficient enough to inform the court not only of the benefits of the program it believes might occur, but, as the *Citizens Utility Board* case held, of the actual impact of the program on consumers.

Although the Commission ruled in its earlier 13-0192 docket that "...the potential benefits of an SVT program in AIC's service territory, while not certain, are likely," (13-0192 Order at 246), the Commission also ruled that since "not all operational, tariff design, and other related issues regarding the SVT tariffs have been fully addressed," a separate proceeding to evaluate the remaining unresolved issues was needed. *Id.* Among the issues that remained were the impacts of the SVT program on Ameren's operations, and the cost of maintaining reliability as a result of any choice program. Ameren Ex. 4.0 at 2. As detailed above, Ameren presented its estimated costs for SVT implementation in detail, including an analysis of the likely future stabilization of natural gas costs and the likely market price of gas over the 2015-2025 timeframe, during which natural gas prices are expected to average between \$4 and \$6 per MMBtu. Ameren Ex. 4.0 at 12:257-263. Ameren calculated the savings that would need to be

achieved by differing levels of customer participation in order to show a net benefit, which shows no net savings once the costs of the program are taken into account. Ameren Ex. 4.1. As a result of that analysis, Ameren concluded that the impact of the SVT program customers would be negative as they would not see a net benefit from the program, even at the highest levels of enrollment. *Id.* The Commission's findings in this proceeding must consider the negative impact of a program for which all ratepayers will pay but under which the benefits are either undefined, unlikely or non-existent.

In conclusion, the Commission's duty to protect the interests of ratepayers cannot be accomplished without taking into account the various impacts of a rate change on those same ratepayers. *Citizens* at 1201. Based on the instant record, the Commission does not have sufficient basis on which to find Ameren's SVT tariffs to be just and reasonable, given that their implementation will cost its ratepayers tens of millions of dollars although no concrete evidence of customer benefit has been shown, and where potentially very few customers may participate. The stakes for ratepayers are simply too high to approve Rider SVT under the current circumstances.

IV. SVT Programmatic Proposals

While CUB-AG strongly recommend the Commission reject Rider SVT altogether, and postpone the development of a competitive gas market for residential customers until a later time when the benefits can clearly be shown to outweigh the costs, should the Commission choose to direct implementation of Rider SVT despite the significant cost increases Ameren has reported, CUB-AG recommend certain additional provisions to the tariff to ensure it complies with the Commission's obligation to ensure that only just and reasonable costs are passed on to ratepayers. CUB-AG therefore request that the Commission adopt the following modifications

to Rider SVT, if it determines that Rider SVT should be approved despite its significant costs and lack of measurable benefit.

A. **Contested Issues**

1. **Display of Price-to-Compare (“PTC”) on SVT Customer Bills and Tariff Language Regarding Notification of PTC.**

CUB-AG recommend that the Commission require Ameren to include the utility PGA rate on the face of its bill in a conspicuous manner for all customers, including customers that have chosen an alternative supplier. The PGA is the default price customers pay for their gas supply if they are not with a supplier. CUB Ex. 2.0 at 7:161-166. Therefore the PGA is the only relevant and reasonable number to be used as the “price-to-compare” or PTC. *Id.* Once you sign up with a supplier, the PGA price is no longer referenced on the bill and therefore consumers would be required to reference independent sources to determine this information. *Id.* To remedy this problem, Mr. McDaniel proposed that Ameren include the relevant price to compare – the utility PGA for the same month – on its customer bills in a conspicuous manner. *Id.* Mr. McDaniel recommends that, in Ameren Exhibit 1.1, Page 4 of 55, in the “Customers Terms and Conditions” subpart #3 Service Options, Ameren include the applicable Purchased Gas Adjustment (“PGA”) charge for that month on the utility consolidated bill as a notification to customers of suppliers of the rate they would be paying if they were a utility customer. *Id.* at 5:126-130. CUB witness McDaniel proposed a sentence be added to this section of the tariff as follows: “Company does not guarantee that Customer will be served under most advantageous gas supply Rider at all times and is not responsible to notify Customer of most advantageous Rider. Company will include a notification of the applicable Purchased Gas Adjustment price for the applicable month on the bill in a conspicuous manner.” *Id.* at 6:132-136.

There are several reasons this change should be adopted. First, Mr. McDaniel testified that price transparency is a critical component to a successfully functioning competitive market. *Id.* at 6:138-146. Once a customer signs up with a supplier, the PGA rate is no longer visible on the utility consolidated bill. *Id.* In its place is the rate the unregulated supplier is charging. By requiring Ameren to show the utility rate on the consolidated bill, customers can see that information contemporaneously on the same bill where their supplier rate is shown. *Id.* This will facilitate a more transparent market and assist consumers in making educated choices in the competitive market. *Id.* Facilitating more informed customer choices also contributes to a better-operating competitive market. *Id.*

Second, this is the first time a Purchase of Receiveables (“POR”) provision will be included in any gas choice program in Illinois. *Id.* at 6-7:147-159. The consequences of uncollectibles resulting from customers who switch to competitive supply, for at least those suppliers who opt to use POR, extend to all ratepayers. *Id.* Gas utility uncollectibles are socialized among all ratepayers through a rider. *Id.* Thus, to the extent that uncollectibles are higher than they otherwise would be because of supplier rates that are higher than the default utility rate, customer default rates could rise and a corresponding increase in uncollectibles could result. *Id.* Mr. McDaniel refers to this as the “upside” risk of POR (pushing uncollectibles amounts upward). *Id.* By providing customers with the PGA rate information on their bill, customers can make more informed decisions about the economic advantages and disadvantages of taking competitive supply. *Id.* Managing the risk associated with this “upside” of POR is a prudent step for the Commission to take in order to protect all ratepayers from an increase in uncollectibles. *Id.*

2. **Rescission Period for Non-Residential Customers with Annual Usage >5,000 Therms**

3. **Nomination Schedules**
4. **200% Penalty for Non-Delivery**
5. **Calculating the Cost for Capacity Release**
6. **Asset Allocation Periods**
7. **Combined Billing / Billing Agents Receiving Gas/Electric Information**
8. **Customer Complaint Tracking and Reporting**

Because utility customers often default to their utility for questions or complaints regarding utility service, Ameren will likely receive calls from customers who are disgruntled with their supply service. CUB Ex. 2.0 at 8:184-192. This could be because either the customer is confused about the fact that they authorized a supplier, or because they perceive the problem as generating from the utility, or they simply default to the utility helpline (because most suppliers will opt to include their supply charges on the utility consolidated bill, customers may not realize they must call the supplier directly to resolve issues with supply rates or they may not recognize it as a supply issue in the first place). *Id.* Whatever the case, it is likely that Ameren will receive calls regarding customer issues with suppliers. *Id.* Mr. McDaniel therefore recommends that the Commission direct Ameren to report to the Commission if it observes a spike in customer complaints about a particular supplier or if it observes a pattern of complaints indicating a problem with that suppliers marketing or service. Thus, Mr. McDaniel suggests adding a sentence to Ameren's SVT Supplier Terms and Conditions page 9, Subpart F, "Suspension of Supplier by Company" as follows: "The Company will advise the Commission if it observes high levels of customer complaints about a particular supplier or if it observes a pattern of customer complaints from a particular supplier relating to a specific issue." *Id.*

In support of this proposal, Mr. McDaniel points to the fact that the costs associated with Ameren's customer service representatives are included in its delivery service rates that are paid by all Ameren customers. *Id.* Thus, to the extent a problematic supplier is driving call volume with Ameren's call center, the increased costs associated with the increased call volume will be paid by all ratepayers. *Id.* It therefore benefits all customers – whether taking supply from Ameren or a supplier – to reduce complaints. *Id.* Complaints would be reduced if supplier behavior is closely monitored and corrective measures taken as quickly as possible once a problem becomes evident. *Id.*

RESA/ICEA witness Ringenbach proposed that CUB's proposal be modified to instead require, if Ameren is capable, a monthly report be provided to ORMD and the supplier to ensure that if there are issues they can be corrected as quickly as possible. CUB-AG are amenable to this modification.

9. Inclusion of Consumer Protections in Contract Offers

In its bench deliberations discussing the request for rehearing on the issue of the legal and policy basis for these consumer protections in Docket No. 13-0192, Chairman Scott stated:

I still believe the Commission's decision to include these consumer protections and reporting requirements in its Order regarding the SVT program are reasonable and appropriate supplements to the existing statutory requirements and will benefit consumers who choose to participate in retail gas choice program. However, these parties raised some interesting issues that surround the practical implementation of those additional requirements. Although the Order notes that we will not relitigate the issues decided in this proceeding, I would encourage the parties to continue the discussion of how best to implement the additional requirements in the future tariff proceeding.

In the applications for rehearing of RGS/RESA/ICEA, the parties identified the following implementation issues or "practical problems" with the consumer protections adopted by the Commission:

- How consumer protections in the Commission’s 13-0192 Order can be enforced;
- Whether Ameren is expected to include the consumer protections in its tariffs and, if so, what responsibility Ameren has if a customer argues that an alternative gas supplier has not complied;
- If the consumer protections are not included in Ameren’s tariffs, then how the alternative gas suppliers and their customers are supposed to know that these requirements even exist; and
- How suppliers should address the Commission’s extension of the “grace period” during which a customer may cancel a supplier contract without penalty from the 10 days provided for in Title XIX of the PUA to the time period provided for in the Commission’s 13-0192 Order?

Because Commission orders must be complied with in the same way the Public Utilities Act (“PUA”) must be complied with by those parties subject to its provisions, there is no need for these consumer protections to be included in the tariff. Alternative gas suppliers must comply with the requirements under Title XIX of the PUA, relevant portions of the Illinois Consumer Fraud and Deceptive Business Practices Act (among other relevant laws), and relevant and applicable directives in Commission orders. Thus, in satisfying the disclosure requirement in the PUA, (220 ILCS 5/19-115(g)(5)(B), Mr. McDaniel proposed that suppliers disclose to customers in the contract/agreement the applicable “grace periods” specified in both the PUA and the *13-0192 Order*, which allow customers to avoid paying a termination fee within specified periods of time under certain circumstances. CUB Ex. 1.0 at 5:109-122. Suppliers should comply with both provisions by explaining each requirement in the contract/agreement (for example “Under the Public Utilities Act, you have ten days from today’s date to cancel this contract without penalty. The Illinois Commerce Commission further extended the time period for cancelation without penalty until the due date of your first bill, and if you were solicited by door-to-door sales, no termination fee shall be assessed if you cancel within the first 6 billing cycles.”). *Id.*

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The PUA requires that suppliers file with the Chief Clerk of the Commission its standard customer contract (among other items), (220 ILCS 19/115(a)(4)), and thus the Commission can review the language in supplier contracts/agreements describing the situations under which a customer may terminate the contract without penalty, and the associated time frames to ensure the suppliers are complying with the PUA and the Commission's directive in Docket No. 13-0192. This will inform customers as to the requirements in both the *13-1092 Order* and the Act.

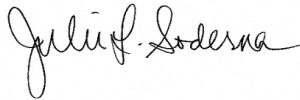
10. **Requirement to File Tariff Allowing Alternative Gas Suppliers ("AGS") to Issue Single Bills**
11. **Other**

II. CONCLUSION

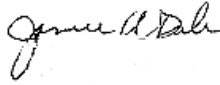
Wherefore, CUB and the AG respectfully request the Commission reject the Rider SVT tariff currently proposed in this proceeding.

January 7, 2015

Respectfully submitted,



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